

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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<b>FNU INDERJIT,</b>	)	
<b>Petitioner</b>	)	
	)	
<b>V</b>	)	<b>No. 15 TT 209</b>
<b>ILLINOIS DEPARTMENT</b>	)	<b>Chief Judge James M. Conway</b>
<b>OF REVENUE,</b>	)	
<b>Respondent</b>	)	
	)	

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois ("the Department") by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer's Petition states as follows:

1. The Notice was issued by the Department on November 7, 2014 assessing a 100% Civil Penalty in the amount of \$55,929.56 for the taxable period of October 31, 2011 through June 30, 2013. Such liability was based off of the unpaid liability of Will Petro, LLC ("Will Petro"), an LLC that Petitioner had established, but that never operated. Petitioner was interested in leasing space from a company named Dipti LLC ("Dipti"). Petitioner decided not to lease the space, and had no further intent to use Will Petro. However, Dipti, through its principal Surinder Kalra ("Kalra"), used the Will Petro EIN and Illinois Sales tax ID to file its ST-1 sales tax returns. A copy of the Notice of deficiency for Will Petro is attached to this Petition.

ANSWER: The Department admits that it issued a Collection Action Notice of Intent to the Petitioner on November 7, 2014. The Department further states that the Notice speaks for itself, and therefore denies the Petitioner's description and characterization thereof including the statements that the notice assessed "a 100% Civil Penalty in the amount of \$55,929.56 for the taxable period of October 31, 2011 through June 30, 2013 and that "Such liability was based off of the unpaid liability of Will Petro, LLC ("Will Petro"), an LLC that Petitioner had established, but that never operated". The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 1 of the petition and therefore neither admits or denies said allegations.

2. Petitioner is an individual residing at 1904 North 103rd Lane Avondale, Arizona, and his phone number is 602-777-0005.

ANSWER: The Department admits the allegations in paragraph 2 of the petition.

3. The Employment Identification Number once associated with this account is 45-3577940, the Illinois Department of Revenue Sales Tax ID number is 4057-2013. Both of these numbers were obtained by for Will Petro. Petitioner never went through with such a lease and had no further involvement with Will Petro.

ANSWER: The Department admits that the Employment Identification Number associated with this account is 45-3577940 and the Illinois Department of Revenue Sales Tax ID number is 4057-2013. The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 3 of the petition and therefore neither admits or denies said allegations.

4. Jurisdiction is proper in Illinois pursuant to section 1010/1-45 of the Illinois Compiled Statutes because Petitioner is a taxpayer pursuant to 35 ILCS 1010/1-10 that was issued an Assessment and Notice of Intent for an alleged tax deficiency pursuant to the Illinois

Income Tax Act, 35 ILCS 5/1002(d).

ANSWER: The allegations in paragraph 4 of the petition consist primarily of legal conclusions and are therefore denied.

5. Jurisdiction is further proper pursuant to 2-209 of the Illinois Code of Civil Procedure, 735 ILCS §§ 5/2-209(1) and (2), because Petitioner's Sales Tax Identification number was used by Will Petro to conduct business within this State.

ANSWER: The allegations in paragraph 5 of the petition consist primarily of legal conclusions and are therefore denied.

6. Venue is proper in Cook County pursuant to section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS § 5/2-101, because it is the county in which the transaction or some part thereof took place.

ANSWER: The allegations in paragraph 6 of the petition consist primarily of legal conclusions and are therefore denied.

7. Petitioner considered leasing space of Dipti at 204 East Baltimore Street Wilmington, IL 60481 and applied for and received both Employment Identification Number 45-3577940 and Illinois Sales Tax ID 4057-2013 for Will Petro in anticipation of the transaction.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the petition and therefore neither admits or denies said allegations.

8. After observing Dipti for one week, Petitioner elected not to go through with the lease. Petitioner had no involvement in the business.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the petition and therefore neither admits or denies said allegations.

9. Despite Petitioner's decision not to lease the space, the seller, in bad faith and without

Petitioner's knowledge or consent, utilized both Petitioner's Illinois Sales Tax Identification and Employer Identification Numbers to file Illinois ST-1 sales tax returns for some or all of the periods at issue.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the petition and therefore neither admits or denies said allegations.

10. During the taxable periods at issue, Kalra was owner and principal of the location that filed the returns under the Will Petro number. Kalra ran the business as his day-to-day principal business function and occupation and made all decisions regarding the business matters.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the petition and therefore neither admits or denies said allegations.

11. Will Petro never conducted any business, as the LLC was solely established for the belief that Petitioner would lease the space from Dipti.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the petition and therefore neither admits or denies said allegations.

12. Neither Will Petro nor Petitioner received any compensation from Dipti, since Petitioner had no involvement in or control over the business.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the petition and therefore neither admits or denies said allegations.

13. In fact, during the taxable periods at issue, Petitioner was engaged full time as a business

owner in Arizona.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the petition and therefore neither admits or denies said allegations.

14. Petitioner had no knowledge of that Dipti was incurring tax liabilities until Will Petra's name and sales tax ID until Petitioner received the November 7, 2014 notice.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the petition and therefore neither admits or denies said allegations.

15. Petitioner had been traveling through India and was the reason he did not receive the November 7, 2014 notice sooner.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the petition and therefore neither admits or denies said allegations.

16. The Department seeks to impose personal liability on Petitioner as a responsible officer of Will Petro pursuant to section 1002(d) of the Illinois Income Tax Act, 35 ILCS 5/1002(d). 35 ILCS 5/1002(d) provides that any person who has control, supervision, or responsibility of filing returns or making payments for a taxpayer, and who willfully fails to do so, shall be personally liable for a penalty equal to the amount of tax due including penalty and interest.

ANSWER: The allegations in paragraph 16 of the petition consist primarily of legal conclusions and are therefore denied.

17. In determining the first element, whether an individual is a responsible person, the courts have indicated that the focus should be on whether that person has significant

control of the business affairs of a corporation and whether he participates in decisions regarding the payment of creditors and the dispersal of funds. *See, e.g., Monday v.*

*United States*, 421 F.2d 1210 (7th Cir. 1970), *cert. denied* 414 U.S. 910 (1973).

Liability attaches to those persons with the power and responsibility within the corporate structure for seeing that taxes are remitted to the government. *Id.*

ANSWER: The allegations in paragraph 17 of the petition consist primarily of legal conclusions and are therefore denied.

18. As to the second element, it must also be determined whether the taxpayer "willfully" failed to remit withholding taxes due to the Department. The phrase "willful failure" is not defined by any Illinois tax statute. However, Illinois courts have held that the Illinois responsible officer provisions are analogous to the provisions of the Internal Revenue Code section 6672 and, as such, Illinois law may be interpreted in a similar manner.

*Branson v. Department of Revenue*, 168 Ill. 2d 247 (1995).

ANSWER: The allegations in paragraph 18 of the petition consist primarily of legal conclusions and are therefore denied.

19. Dipti illegally used Will Petra's information to file sales tax returns with the Illinois Department of Revenue. Since Petitioner had no connection to or involvement with Dipti, Petitioner was never required to collect, truthfully account for, and/or pay over any tax imposed. As such, Petitioner had no statutorily-imposed duty to make Will Petro's tax payments.

ANSWER: The allegations in paragraph 19 of the petition consist primarily of legal conclusions and are therefore denied.

20. Petitioner may not be presumed to be a "responsible person" merely from the fact that Kalra utilized Petitioner's Illinois Sales Tax Identification and Employment

Identification Numbers for the filing of Dipti's tax returns without Petitioner's knowledge or consent in bad faith.

ANSWER: The allegations in paragraph 20 of the petition consist primarily of legal and /or factual conclusions and are denied.

21. After creating the LLC, Petitioner had no affiliation with or involvement in Will Petro and never exercised any authority over Will Petra's finances, tax deposits, payroll, or general decision making, as Petitioner was engaged full-time elsewhere. Petitioner took no action with respect to Will Petro's expenditures, tax deposits, or payroll.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 21 of the petition and therefore neither admits or denies said allegations.

22. For the taxable periods at issue, Petitioner was completely disconnected from the financial decisions of Will Petro (which was being utilized by Dipti), and had no reason to suspect otherwise, since he had chosen not to lease Dipti's premises. Petitioner did not write checks and made no decisions regarding the payment of Will Petra's creditors.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 22 of the petition and therefore neither admits or denies said allegations.

23. Petitioner did not make a voluntary, conscious, nor deliberate choice to pay sales taxes to other creditors instead of paying taxes to the government.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 23 of the petition and therefore neither admits or denies said allegations.

24. Petitioner was a busy running a business in Arizona during the taxable periods at issue.

ANSWER: The Department lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 24 of the petition and therefore neither admits or denies said allegations.

25. WHEREFORE, Petitioner Fnu Inderjit accordingly and respectfully requests the reversal or modification of the Notice because Petitioner: (1) was not a "responsible person" and (2) did not act "willfully" to avoid the payment of taxes for the taxable periods at issue within the meaning of 35 ILCS 5/1002(d).

ANSWER: The allegations in paragraph 25 of the petition consist primarily of legal conclusions and are therefore denied.

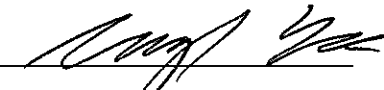


**WHEREFORE**, the Department prays that the Tribunal enter an order:

- a. denying the prayer for relief in the Petitioner's Petition in its entirety;
- b. finding that the Notice of Penalty Liability at issue is correct as issued;
- c. ordering judgment in favor of the Department and against the Taxpayer; and  
granting such further relief as this Tribunal deems appropriate under the  
circumstances.

Respectfully Submitted,

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State of Illinois

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**ILLINOIS INDEPENDENT TAX TRIBUNAL  
CHICAGO, ILLINOIS**

**FNU INDERJIT**

**v.**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE**

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**15-TT-209**

**Chief Judge James M. Conway**

**AFFIDAVIT OF BRIAN GOLDBERG  
PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

1. I am currently employed by the Illinois Department of Revenue in the Legal Services Bureau.
2. My current title is Deputy General Counsel.
3. I lack the personal knowledge required to either admit or deny the allegations alleged and neither admitted or denied in Petitioner's Petition paragraphs 1,3,7,8,9,10,11,12,13,14,15,21,22,23, and 24.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he (she) verily believes the same to be true.



Brian Goldberg  
Deputy General Counsel  
Illinois Department of Revenue

DATED: 11/16/15